

## BEFORE THE FEDERAL ELECTION COMMISSION

SECRETARIAT

In the Matter of )

2006 JUN -5 A 9:31

MUR 5699 )

CASE CLOSURE UNDER THE  
ENFORCEMENT PRIORITY SYSTEM

NEW YORK SENATE 2000 )

**SENSITIVE**

## GENERAL COUNSEL'S REPORT

The Office of General Counsel has scored MUR 5699 as a low-rated matter. Under the Enforcement Priority System, matters that are low-rated and are deemed inappropriate for review by the Alternative Dispute Resolution Office are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases.

The facts giving rise to this complaint involve an alleged unpaid debt to the complainant in the amount of \$13,057.94, arising from her consulting services for a 2000 Hollywood gala that was intended as a salute to President Clinton. Additionally, the complainant has requested attorney's fees, bank fees and interest on the debt from the date of its inception. The Commission previously reviewed the facts giving rise to this dispute in MUR 5225. As part of the Commission's finding, and the respondent New York Senate 2000's conciliation agreement in the matter, the costs complainant incurred were determined to be an in-kind contribution to the committee. The committee subsequently issued a check to the complainant in the amount of \$13,057.94 on January 30, 2006, and reported the payment on its 2006 April Quarterly and Termination reports.

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1 The only apparent Federal Election Campaign Act issue left unresolved in this matter  
2 is whether the respondent committees were required to report the remaining fees (attorney's  
3 fees, bank fees, and interest) as debts on their disclosure reports. The respondents claim that  
4 the issues are time barred, and they are not subject to Commission enforcement, because they  
5 are contractual in nature. Moreover, respondents maintain that the Conciliation Agreement  
6 in MUR 5225 bars Commission action against them.<sup>1</sup>

7 The underlying facts giving rise to this complaint are stale since the alleged activity in  
8 this case took place over five years ago. *Federal Election Commission v. Williams*, 104 F.3d  
9 237 (9<sup>th</sup> Cir. 1996), *cert. denied*, 522 U.S. 1015 (1997). While respondents may have had  
10 reporting obligations that are not time barred, in reviewing both the merits and the procedural  
11 posture of MUR 5699, in light of the Commission's previous findings and conciliation  
12 agreement in MUR 5225, and in furtherance of the Commission's priorities and resources  
13 relative to other pending matters on the Enforcement docket, the Office of General Counsel  
14 believes that the Commission should exercise its prosecutorial discretion and dismiss the  
15 matter.<sup>2</sup> See *Heckler v. Chaney*, 470 U.S. 821 (1985).

### 16 RECOMMENDATION

17 The Office of General Counsel recommends that the Commission dismiss  
18 MUR 5699, close the file effective two weeks from the date of the Commission vote, and  
19 approve the appropriate letters. Closing the case as of this date will allow CELA and

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<sup>1</sup> Under paragraph VIII of the conciliation agreement dated December 29, 2005, the parties agreed that, "unless violated [it] shall serve as a complete bar to any further action against New York Senate 2000 and its current and former joint fundraising participants, agents, employees and officers for acts arising out of, or relating to New York Senate 2000, Event 39 and all fundraising events held by New York Senate 2000 between September 16, 1999 through November 7, 2000 "

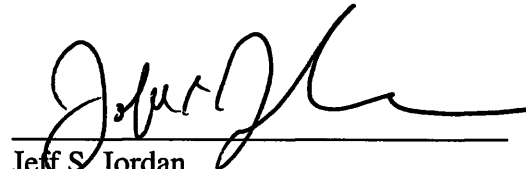
General Law and Advice the necessary time to prepare the closing letters and the case file for  
the public record.

James A. Kahl  
Deputy General Counsel

6/2/06  
Date

BY:

  
Gregory R. Baker  
Special Counsel  
Complaints Examination  
& Legal Administration

  
Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination  
& Legal Administration

Attachment:  
Narrative in MUR 5699

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3  
4 **MUR 5699**

5  
6 **Complainant:** Patricia Waters

7  
8 **Respondents:** New York Senate 2000 and  
9 Andrew Grossman, as treasurer and individually  
10 Friends of Hillary and  
11 John F.X. Mannion, as treasurer  
12 Hillary Rodham Clinton for US Senate Committee, Inc. (FKA  
13 Hillary Rodham Clinton for U.S. Senate Exploratory Committee),  
14 and Shelly Moskwa, as treasurer  
15 Hillary Rodham Clinton  
16 New York State Democratic Committee and,  
17 David Alpert, as treasurer  
18 Democratic Senatorial Campaign Committee and  
19 JB Poersch, as treasurer  
20  
21 David Rosen

22  
23 **Allegations:** Complainant alleges that in July 2000 she was hired as a consultant and  
24 performed work and incurred various expenses on behalf of the Hollywood Gala to  
25 Salute President William Jefferson Clinton. Complainant further alleges that she was not  
26 fully paid for her work or reimbursed for her expenses, and that approximately  
27 \$13,057.94 still remains unpaid. According to complainant, New York Senate 2000 "and  
28 other related entities" received the direct benefit of her services and "had the ultimate  
29 responsibility for same." She further alleges her invoices have never been disputed.  
30

31 **Responses:** New York Senate 2000 responded that the 2000 fund raising event was at  
32 the center of closed MUR 5225, which conciliated with the Commission on December  
33 13, 2005. The agreement states in pertinent part that unless it is violated it "shall serve as  
34 a complete bar to any further action against New York Senate 2000 and its current and  
35 former joint fundraising participants, agents, employees and officers for acts arising out  
36 of, or relating to New York Senate 2000, Event 39 [the Gala at issue] and all fundraising  
37 events held by New York Senate 2000 between September 16, 1999 through November  
38 7, 2000." Furthermore, on January 30, 2006, New York Senate 2000 issued a check to  
39 the complainant in the amount of \$13,057.94, thereby refunding the in-kind contribution  
40 that the Commission found that she made to the committee. Additionally,  
41 notwithstanding the conciliation agreement, the claim before the Commission is purely  
42 contractual in nature and, therefore, not subject to the Federal Election Campaign Act.  
43

44 Hillary Rodham Clinton for US Senate Committee responded by reiterating the  
45 notion that the complainant's claim is contractual in nature. Additionally, the respondent  
46 claims that the action was time barred under the statute of limitations.

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1 **General Counsel Note:** The facts giving rise to this complaint took place in 2000. The  
2 complainant has orally informed this Office that interest, bank fees, and attorney's fees  
3 are still outstanding from New York Senate 2000, notwithstanding the repayment of the  
4 in-kind contribution of \$13,057.94, which was originally at issue in MUR 5225. New  
5 York Senate 2000 has terminated its reporting responsibilities with the Commission. In  
6 its final report it showed the repayment of the in-kind contribution, but did not report any  
7 further debts or obligations, in dispute or otherwise, with the complainant.

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9 **Date complaint filed:** January 13, 2006

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11 **Response filed:** February 7 and 10, 2006

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